IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2134 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAMANLAL CHHOTALAL JARIWALA

Versus

VISKO LAND CORPORATION

Appearance:

1. First Appeal No. 2134 of 1983

MR SN SHELAT for Petitioner No. 1-3

MR DD VYAS for Respondent No. 1-5

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 21/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

This appeal is directed against the judgment and order dated 30.11.1982 passed by the learned 4th Jt. Civil Judge, (S.D.), Surat in Special Civil Suit No. 606 of 1979 dismissing the said suit filed by the appellants original plaintiffs. Suit was filed by the original

plaintiffs against the defendants for a decree of specific performance of the contract. The plaintiffs alternatively prayed for a decree of Rs. 95,000.00 being Rs.47,500.00 towards the earnest money and Rs.47,500.00 towards interest by way of damages. The plaintiffs have also prayed for the costs of the suit.

Since the appeal is required to be disposed of on the question of maintainability of the suit, which goes to the root of the matter, it is not necessary for us to re-narrate the facts as well as the evidence and to appreciate the same. It appears that the plaintiffs initially filed the suit in their own names but subsequently by amendment, also joined defendant No.3 proposed Anand Cooperative Housing SOciety as plaintiff No.3 in the suit and prayed for a decree of specific performance of the contract of Satakhat at Exh. 44.

Learned counsel appearing for the respondent has submitted that the suit by the proposed society is not maintainable. We quite see substance in the submissions made before us. Suit for specific performance of an agreement to purchase the suit property filed by the unregistered cooperative society is not maintainable as the unregistered cooperative society cannot enter into an agreement and, therefore, it cannot sue for enforcing or performing such contract (See the case of Shivlal Cooperative Housing Society Ltd. versus Santaben reported in 2002 (1) GLR page 426 and Maneklal versus Rajendrakumar M. Shah reported in Judgments Today Vol.10 2001 SC page 84).

In para 10 of the judgment, the trial court has also, in no uncertain terms, observed that "in any view and relying on ruling of the Gujarat High Court, the decree for the specific performance for the contract in favour of the plaintiffs cannot be contract by the unregistered society is nullity for the relief of specific performance. Accordingly, issue No.6 was held in the negative."

Assuming that the suit initially filed by the appellants no.1 and 2, partners, for a decree of Rs.47,500.00 is maintainable, in view of the specific findings recorded by the learned trial Judge namely that the said claim is time barred, we are of the opinion that no exception can be taken in the said finding recorded by the learned trial Judge. In para 8 of the Plaint, the plaintiffs have averred that the cause of action for the suit arose on 8.5.1974 when the defendants executed Satakhat in favour of the plaintiffs and thereafter on 31.7.1974 when the period of Satakhat was extended upto 31.12.1977 and, thereafter, on 13.11.1978 when notice was

given by registered post A.D. and, therefore, the suit is brought within the period of limitation. On perusal of the suit Satakhat at Exh. 44, looking to the endorsement made on the rear side of page 4 which is for the extension of the time limit, it is clear that the time limit was extended upto 31.12.1977 by the defendant in favour of the first party i.e. proposed Anand Coop. Housing Society. It is, thus, clear that the extension of time limit upto 31.12.1977 by the defendant in favour of the said society does not extend the time limit in favour of the plaintiffs no.1 and 2 to bring the suit for recovery of the earnest money under section 65 of the Contract Act in their personal individual capacity. Since we have already held that the suit Satakhat Exh. 44 being executed only in favour of the proposed unregistered society which has no legal existence or legal entity and, therefore, null and void which cannot be looked into for any purpose including the purpose of extension of limitation also. Payment of Rs.47,500.00 made by the plaintiffs to the defendant by way of cheque dated 8.5.1974 of the Union Bank of India Station Road Branch Surat and the said cheque was encashed by the defendant and the present suit was filed on 31.12.1979 by the plaintiffs. As observed earlier, period of limitation was extended in the suit Satakhat upto 31.12.1977 in favour of the said Society and not in favour of the plaintiffs no.1 and 2 in their personal individual capacity and, therefore, even taking that the plaintiffs no.1 and 2 are entitled to bring the suit under section 65 of the Contract Act for refund of the amount of earnest money on the principles of equity, in that event, they should have brought the suit within three years under the Limitation Act. In this view of the matter,in our opinion, the suit is time barred even for the relief of earnest money and damages.

We, therefore, see no merits in this appeal and the same is, therefore, dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Dt. 21.10.2002 (Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

Vyas